



Statement by His Excellency Archbishop Ivan Jurkovič
Permanent Observer of the Holy See to the UN and Other International Organizations in Geneva
at the Open-ended Intergovernmental Working Group on Transnational Corporations and Other
Business Enterprises with Respect to Human Rights
Legal Liability – Item 5
Geneva, 17 October 2018

Mr. Chair,

International law has yet to articulate the human rights obligations of corporations and to provide mechanisms for regulating corporate conduct in the field of human rights. Since the nineteenth century, international law has addressed almost exclusively the conduct of States. Traditionally, States have been viewed as the only “subjects” of international law, the only entities capable of bearing legal rights and duties.

Developing and Least Developed Countries suffer the consequences of an asymmetry in the international system, whereby the rights of business companies are backed up by hard laws and strong enforcement mechanisms, while their obligations are backed up only by soft laws, like voluntary guidelines. One of the Guiding Principles on Business and Human Rights’ most transformative contributions is the requirement that the responsibility of companies to respect human rights is not limited to their own operations but extends to human rights impacts connected to their products and services throughout their network of suppliers and other business relationships. Through the Guiding Principles, it has been recognized that companies do not control every dimension of these relationships, so they introduce the concept of *leverage*. Where human rights are adversely affected by activities in a company’s value chain, the company’s responsibility is to use its *leverage* to try to improve those people’s situation. Where the *leverage* is insufficient the company is expected to try and increase it, perhaps in collaboration with other companies or different stakeholders.

During the discussions in preparation of the first draft of this legal instrument, the need to address the gaps in the global legal framework emerged. Unfortunately, the legal framework has not kept up with evolutions in the global economic and financial reality. The growing transnational dimension of the activities of the enterprise called this Working Group to frame the civil and criminal liability through the inclusion of business operations and relationships in countries other than the countries where the business could be based. While under general international law the concept of jurisdiction serves to allocate state competences, in human rights law the term is used to define, as appropriately as possible, the pool of persons to which a state ought to secure human rights.

The protection of human rights is traditionally framed within the context of public law, including constitutional, administrative and criminal law. Legal liability for business enterprises in domestic law typically includes responsibility under criminal, civil and

administrative law. In certain jurisdictions, constitutional law plays a role in the protection of rights. However, reality shows that those affected by corporate abuses, especially in certain jurisdictions, also tend to use private law, which often does not provide a solution to those challenges. Article 10 of the zero draft represents a good basis for defining the legal liability, overcoming the realm of public law, by assigning to domestic law the capacity to hold natural and legal persons “criminally, civil or administratively liable for violations of human rights in the context of business activities of transnational character”.

It emerges, therefore, that legal liability results in a combination of public and private law with substantive and procedural elements. Through the provision of Article 10.8, “Criminal liability”, the offences and their authors are defined with sufficient clarity, accentuating that criminal liability of a legal entity does not exclude the personal individual criminal responsibility of company directors or managers. Furthermore, through the inclusion of the reversal of the burden of proof there is a clear effort to balance, in the contest of huge power and resources asymmetries, the differences between corporations and affected local communities. Such a language represents a good basis for the negotiation.

In conclusion, the Delegation of the Holy See would like to recall that our efforts during this first session should be devoted “not only to create ‘ethical’ sectors or segments of the economy or the world of finance, but to ensure that the whole economy — the whole of finance — is ethical, not merely by virtue of an external label, but by its respect for requirements intrinsic to its very nature”.¹

Thank you, Mr. Chair.

¹ Pope Benedict XVI, Encyclical Letter, *Caritas in veritate*, n.45.